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Attorneys for Secured Creditor Boston Private Bank
& Trust Company

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:
272 E. Santa Clara Grocery, LLC
Debtor.

CASE NO. 13-53491

CHAPTER NO. 11

**SECURED CREDITOR BOSTON
PRIVATE BANK & TRUST COMPANY'S
NOTICE OF CLAIM OF TITLE TO
RENTS & PROFITS, OR,
ALTERNATIVELY, SECURITY
INTEREST IN RENTS & PROFITS AND
NON-CONSENT TO USE OF CASH
COLLATERAL**

[No Hearing Required]

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1 **TO DEBTOR, DEBTOR'S ATTORNEY, AND ALL INTERESTED PARTIES:**

2 NOTICE IS HEREBY GIVEN that, pursuant to §§552(b), and 546(b) of Title 11 of the
3 United States Code (the "Bankruptcy Code"), *Butner v. U.S.*, (1979) 440 US 48, 54, and
4 California Civil Code §2938(c), Boston Private Bank & Trust Company ("Boston Private")
5 claims title in the rents and profits in that certain real property commonly known as "272 E. Santa
6 Clara Street, San Jose, CA 95113," Assessor's Parcel No. APN: 467-24-111 (the "Property").
7 Boston Private's title arises from a certain loan it made to Kimomex Santa Clara, LLC,
8 predecessor owner to the debtor and debtor-in-possession, LLC (the "Debtor" or "Santa Clara
9 LLC") in connection with the Property, which loan is secured by a deed of trust and assignment
10 of rents as described below, as well as its pre-petition enforcement of that assignment of rents
11 following Debtor's default in the form of a May 17, 2013 written demand on tenant Grocery
12 Outlet, Inc. pursuant to California Civil Code §2938(c), that also is described below. Boston
13 Property acknowledges the lone published California bankruptcy case that has considered this
14 issue, *DRMG, LLC v Green (In re Superior Acquisitions, Inc.)* (Bankr ND Cal, June 27, 2011,
15 No. 10-13730, A.P. No. 11-1034) 2011 Bankr Lexis 2485 (the "*DRMG* case"). It is respectfully
16 submitted, however, that the *DRMG* case was incorrectly decided and is not binding on this Court
17 in any event.

18 NOTICE IS FURTHER GIVEN that, in the alternative and without waiving its claim set
19 forth above, and in the event that the rents and profits of the Property are determined to be an
20 asset of the Debtor's bankruptcy estate, pursuant to §§ 552(b), 363(c)(2) and 546(b) of Title 11 of
21 the Bankruptcy Code, Boston Private has a security interest in the rents and profits of the
22 Property. Boston Private's security interest arises from certain loans it made to the Debtor in
23 connection with the Property, which loan is secured by a deed of trust and assignment of rents as
24 described below.

25 NOTICE IS FURTHER GIVEN that, in the alternative and without waiving its claim set
26 forth above and in the event that the rents and profits of the Property are determined to be an asset
27 of the Debtor's bankruptcy estate, pursuant to §§552(b), 363(c)(2) and 546(b) of Title 11 of the
28 Bankruptcy Code, Boston Private has a security interest in the rents and profits of the Property.

1 Boston Private's security interest arises from certain loans it made to the Debtor in connection
2 with the Property, which loan is secured by a deed of trust and assignment of rents as described
3 below.

4 That certain Deed of Trust on the Property dated July 15, 2008 (the "Deed of Trust"),
5 which was recorded on July 18, 2008, in the Office of the Santa Clara County Recorder as
6 Instrument No. 19928835.

7 That certain Assignment of Rents dated July 18, 2008, which was recorded on July 18,
8 2008 in the Office of the Santa Clara County Recorder as Instrument No. 19928836.

9 That certain Subordination, Non-Disturbance and Attornment Agreement, dated June 30,
10 2012, and recorded on September 13, 2012 in the Office of the Santa Clara County Recorder as
11 Instrument No. 21851245.

12 NOTICE IS FURTHER GIVEN that pursuant to Bankruptcy Code §546(b), Boston
13 Private hereby claims a perfected security interest in rents, issues and profits of the Property,
14 Rents and Additional Rents.

15 NOTICE IS FURTHER GIVEN that all rents, issues and profits generated hereafter from
16 the Property, Rents and Additional Rents are deemed cash collateral as defined under Bankruptcy
17 Code §§363(a) and 363(c)(2)(a) and are subject to the perfected security interest held by
18 Boston Private.

19 NOTICE IS FURTHER GIVEN that said cash collateral must be segregated and
20 separately accounted for pursuant to Bankruptcy Code §363(c)(4).

21 NOTICE IS FURTHER GIVEN that on May 17, 2013, Boston Private gave written notice
22 to Grocery Outlet, Inc. pursuant to California Civil Code §2938 that all rents are to be paid by
23 said tenant to Boston Private and that therefore all rents due or owing thereafter are not property
24 of Debtor's bankruptcy estate and must be segregated and turned over to Boston Private.

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1 NOTICE IS FURTHER GIVEN that Boston Private does not consent to the use of its cash
2 collateral and hereby demands that such funds generated from the Property, Rents and Additional
3 Rents be segregated and separately accounted for as required by law and turned over to Boston
4 Private until such time as Boston Private may consent to such use.

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6 Dated: July 1, 2013

HOPKINS & CARLEY
A Law Corporation

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9 By: /s/ Stephen J. Kottmeier

Stephen J. Kottmeier
Jay M. Ross
Michaeline H. Correa
Attorneys for Secured Creditor
Boston Private Bank & Trust

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**SECURED CREDITOR BOSTON PRIVATE BANK & TRUST
COMPANY'S NOTICE OF SECURITY INTEREST IN RENTS &
PROFITS AND NON-CONSENT TO USE OF CASH COLLATERAL**

DEBTOR: 272 E. Santa Clara Grocery, LLC 272 S. San Antonio Road Los Altos, CA 94022	DEBTOR'S ATTORNEY: William J. Healy Campeau, Goodsell and Smith 440 N 1st St. #100 San Jose, CA 95112
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20 Largest Creditors

<p>Andrew Lewis 475 S. San Antonio Rd. Los Altos, CA 94022</p>	<p>Ogen Perry 475 S. San Antonio Rd. Los Altos, CA 94022</p>
<p>ERAS Environmental, Inc. 1522 B Street Hayward, CA 94541</p>	<p>Rossi, Hamerslough 1960 The Alameda, Ste. 200 San Jose, CA 95126</p>

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 1, 2013 at San Jose, California.

/s/
JillAnn J. Meade